

SENATE BILL No. 498

DIGEST OF INTRODUCED BILL

Citations Affected: IC 34-28-5; IC 36-1-3-8.

Synopsis: Ordinance violations. Allows a defendant against whom a judgment is entered in an action to enforce an ordinance to perform community restitution or service instead of paying a monetary judgment. Allows a county or municipality to establish fines for ordinance violations of not more than: (1) \$2,500 for a first violation of an ordinance; and (2) \$7,500 for a second or subsequent violation of an ordinance.

Effective: July 1, 2005.

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January 18, 2005, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.

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Introduced

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

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SENATE BILL No. 498

A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure and local government.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 34-28-5-1 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) An action to
3 enforce a statute defining an infraction shall be brought in the name of
4 the state of Indiana by the prosecuting attorney for the judicial circuit
5 in which the infraction allegedly took place. However, if the infraction
6 allegedly took place on a public highway (as defined in IC 9-25-2-4)
7 that runs on and along a common boundary shared by two (2) or more
8 judicial circuits, a prosecuting attorney for any judicial circuit sharing
9 the common boundary may bring the action.
- 10 (b) An action to enforce an ordinance shall be brought in the name
11 of the municipal corporation. The municipal corporation need not
12 prove that it or the ordinance is valid unless validity is controverted by
13 affidavit.
- 14 (c) Actions under this chapter (or IC 34-4-32 before its repeal):
15 (1) shall be conducted in accordance with the Indiana Rules of
16 Trial Procedure; and
17 (2) must be brought within two (2) years after the alleged conduct



or violation occurred.

(d) The plaintiff in an action under this chapter must prove the commission of an infraction or ordinance violation by a preponderance of the evidence.

(e) The complaint and summons described in IC 9-30-3-6 may be used for any infraction or ordinance violation.

(f) The prosecuting attorney or the attorney for a municipal corporation may establish a deferral program for deferring actions brought under this section. Actions may be deferred under this section if:

(1) the defendant in the action agrees to conditions of a deferral program offered by the prosecuting attorney or the attorney for a municipal corporation;

(2) the defendant in the action agrees to pay to the clerk of the court an initial user's fee and monthly user's fee set by the prosecuting attorney or the attorney for the municipal corporation in accordance with IC 33-37-4-2(e);

(3) the terms of the agreement are recorded in an instrument signed by the defendant and the prosecuting attorney or the attorney for the municipal corporation;

(4) the defendant in the action agrees to pay court costs of twenty-five dollars (\$25) to the clerk of court if the action involves a moving traffic offense (as defined in IC 9-13-2-110); and

(5) the agreement is filed in the court in which the action is brought.

When a defendant complies with the terms of an agreement filed under this subsection (or IC 34-4-32-1(f) before its repeal), the prosecuting attorney or the attorney for the municipal corporation shall request the court to dismiss the action. Upon receipt of a request to dismiss an action under this subsection, the court shall dismiss the action. An action dismissed under this subsection (or IC 34-4-32-1(f) before its repeal) may not be refiled.

(g) If a judgment is entered against a defendant in an action to enforce an ordinance, the defendant may perform community restitution or service (as defined in IC 35-41-1-4.6) instead of paying a monetary judgment for the ordinance violation as described in section 4(e) of this chapter if:

(1) the:

(A) defendant; and

(B) attorney for the municipal corporation;

agree to the defendant's performance of community

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1 **restitution or service instead of the payment of a monetary**
 2 **judgment;**

3 **(2) the terms of the agreement described in subdivision (1):**

4 **(A) include the amount of the judgment the municipal**
 5 **corporation requests that the defendant pay under section**
 6 **4(e) of this chapter for the ordinance violation if the**
 7 **defendant fails to perform the community restitution or**
 8 **service provided for in the agreement as approved by the**
 9 **court; and**

10 **(B) are recorded in an instrument signed by the defendant**
 11 **and the attorney for the municipal corporation;**

12 **(3) the agreement is filed in the court where the judgment was**
 13 **entered; and**

14 **(4) the court approves the agreement.**

15 **If a defendant fails to comply with an agreement approved by a**
 16 **court under this subsection, the court shall require the defendant**
 17 **to pay up to the amount of the judgment requested in the action**
 18 **under section 4(e) of this chapter as if the defendant had not**
 19 **entered into an agreement under this subsection.**

20 SECTION 2. IC 34-28-5-4 IS AMENDED TO READ AS
 21 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) A judgment of up
 22 to ten thousand dollars (\$10,000) may be entered for a violation
 23 constituting a Class A infraction.

24 (b) A judgment of up to one thousand dollars (\$1,000) may be
 25 entered for a violation constituting a Class B infraction.

26 (c) A judgment of up to five hundred dollars (\$500) may be entered
 27 for a violation constituting a Class C infraction.

28 (d) A judgment of up to twenty-five dollars (\$25) may be entered for
 29 a violation constituting a Class D infraction.

30 (e) **Subject to section 1(g) of this chapter**, a judgment:

31 (1) up to the amount requested in the complaint; and

32 (2) not exceeding any limitation under IC 36-1-3-8;

33 may be entered for an ordinance violation.

34 SECTION 3. IC 34-28-5-8 IS AMENDED TO READ AS
 35 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. The violations clerk
 36 or deputy violations clerk shall:

37 (1) accept:

38 (A) written appearances;

39 (B) waivers of trial;

40 (C) admissions of violation;

41 (D) declarations of nolo contendere for moving traffic
 42 violations;

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(E) payments of judgments (including costs) in traffic violation cases; ~~and~~

(F) deferral agreements made under section 1(f) of this chapter (or IC 34-4-32-1(f) before its repeal) and deferral program fees prescribed under IC 33-37-4-2(e); **and**

(G) community restitution or service agreements made under section 1(g) of this chapter;

(2) issue receipts and account for any judgments (including costs) collected; and

(3) pay the judgments (including costs) collected to the appropriate unit of government as provided by law.

SECTION 4. IC 36-1-3-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. (a) Subject to subsection (b), a unit does not have the following:

(1) The power to condition or limit its civil liability, except as expressly granted by statute.

(2) The power to prescribe the law governing civil actions between private persons.

(3) The power to impose duties on another political subdivision, except as expressly granted by statute.

(4) The power to impose a tax, except as expressly granted by statute.

(5) The power to impose a license fee greater than that reasonably related to the administrative cost of exercising a regulatory power.

(6) The power to impose a service charge or user fee greater than that reasonably related to reasonable and just rates and charges for services.

(7) The power to regulate conduct that is regulated by a state agency, except as expressly granted by statute.

(8) The power to prescribe a penalty for conduct constituting a crime or infraction under statute.

(9) The power to prescribe a penalty of imprisonment for an ordinance violation.

(10) The power to prescribe a penalty of a fine as follows:

(A) More than ten thousand dollars (\$10,000) for the violation of an ordinance or a regulation concerning air emissions adopted by a county that has received approval to establish an air program under IC 13-17-12-6.

(B) For a violation of any other ordinance:

(i) more than two thousand five hundred dollars (\$2,500) for any other a first violation of the ordinance; and

(ii) more than seven thousand five hundred dollars

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- 1 **(\$7,500) for a second or subsequent violation of the**
2 **ordinance.**
3 (11) The power to invest money, except as expressly granted by
4 statute.
5 (12) The power to order or conduct an election, except as
6 expressly granted by statute.
7 (b) A township does not have the following, except as expressly
8 granted by statute:
9 (1) The power to require a license or impose a license fee.
10 (2) The power to impose a service charge or user fee.
11 (3) The power to prescribe a penalty.

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